

09/035,136 (Grove et al.)

Attorney Docket Number 27916/128354

REMARKS

Independent claims 1 and 34 are amended. Claim 23 is canceled because it recites the limitation now incorporated into claims 1 and 34. No new claims are added. Accordingly, no additional claim fees are due. Applicants believe the claims are allowable as filed. Nonetheless, the present amendments are provided to expedite prosecution of the now claimed subject matter and to further clarify what applicants regard as one of their inventions.

Both claims 1 and 34 are amended to correct a typographical error with respect to the terminology "calf member" and to recite the limitation "wherein said knee end of said calf member does not extend higher than the knee of said patient." Support for the amendments is found throughout the specification, including the drawings and the claims as filed. Applicants request entry of the present amendments and consideration of the following arguments.

The undersigned counsel for applicants thanks Examiner Richman for the courtesies extended in the formal interview of April 14, 1999, with inventor Dr. Freer, engineer Dr. Ding-Yu Fei and the undersigned counsel for applicants. During the interview, the references cited by the examiner in support of his claim rejections under 35 USC §103(a) were discussed. As the following remarks elucidate, the present claims are allowable over the cited references.

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**THE CLAIMED INVENTION IS NOT
OBVIOUS OVER MIZRACHY IN VIEW OF BEARD et al.**

Claims 1-36 stand rejected under 35 USC §103(a) assertedly because they are rendered obvious by the combined teachings of U.S. Patent No. 4,003,374 to Mizrachy and U.S. Patent 5,112,296 to Beard *et al.* Applicants traverse. At page 2 of the Official Action, Examiner Richman asserts that Mizrachy

discloses a calf member having a heel end and a knee end (10), a baseplate having a heel end and a toe end (12, calf plate and said base plate are rigidly attached to one another (15), a footplate being rotatably attached to said heel end of said baseplate (14), an inflatable bellows (21), securing structure . . .

In this regard, applicants note that, at column 2, lines 56-61 of Mizrachy, the reference discloses element (10) as a "padded frame" and element (11) as "a belt" for securing a patient to frame (10). Figures 1-2a of the reference, and the detailed description of the specification show frame (10) as both a) extending nearly the full length of a patient's leg and b) necessarily attached to an operating table for use on an anesthetized patient. Indeed, as the drawings show, securing belt (11) is attached above the knee of a patient. In other words, the device of Mizrachy neither comprehends nor discloses a calf member nor does it disclose a calf member in combination with other elements to form a foot flexion device.

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Moreover, independent apparatus claim 13 itself recites, *inter alia*, an "operating table" in combination with "means for supporting at least one leg of the patient upon said operating table" and "means operatively associated with the supporting means for periodically dorsiflexing at least one foot of said patient . . ." Thus, required element (10) of Mizrachy is a "frame" for securing the overall apparatus to an operating table, and is neither identical to applicants' "calf member" element nor functionally equivalent to it. Without more, the Examiner's reliance upon Mizrachy does not withstand scrutiny.

Similar logic applies to the combination of Mizrachy with Beard *et al.* The Examiner relies on Beard *et al.*, allegedly because it discloses "an EMG signal used to control a feedback resistance device." Even if this were so, the combination must fail because, as discussed above, other elements of the claimed invention are absent from Mizrachy. Accordingly, applicants urge that the teachings of Mizrachy, in combination with Beard *et al.*, cannot yield the presently claimed invention. Withdrawal of the rejection of the claims under 35 USC §103(a) is requested therefore.

Claims 1-36 stand rejected under 35 USC §112, second paragraph, assertedly because the term "calf plate" in claims 1 and 34 has no antecedent basis in the claims. The present amendments to claims 1 and 34 delete the terminology "calf member" and thereby obviate the rejection under 35 USC §112. Applicants therefore request its withdrawal.

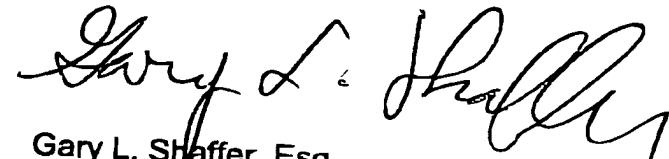
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For the above given reasons, applicants urge that the present claims are allowable in view of the cited references. Accordingly, withdrawal of the rejections and an early notice of allowance is solicited. However, if prosecution of the present application can be expedited in any manner, Examiner Richman is requested to telephone the undersigned at (202) 216-8158 in Washington, D.C.

Please debit Deposit Account No. 22-0261 for any underpayment and credit the same account for any overpayment of fees.

Respectfully submitted,



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